

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN A. HIRSCH AND RONALD W. ZOLLA,)
Individually and as officers, directors, and)
shareholders of ZHL, Inc. and ZHL, Inc.)
Plaintiffs,)
v.) Civil Action
MICHAEL LAMENSDORF and) No. 05-10902-DPW
KATHY LAMENSDORF, Individually and)
as shareholders of ZHL, INC.,)
Defendants.)

)

**SECOND AFFIDAVIT OF JOHN A. HIRSCH
IN SUPPORT OF MOTION TO REMAND**

1. I, John A. Hirsch, am one of the plaintiffs in this matter. I make this affidavit to respond to certain representations which I understand that the defendants (collectively, "the Lamensdorfs") have made in pleadings filed with this Court. I make this affidavit of my own personal knowledge.

2. The Lamensdorfs have pointed out that at various times Mr. Zolla and I have filed pleadings in the Massachusetts State Court in which ZHL's address is given as 17 Hawkes Street, Marblehead, Massachusetts. In fact, that is where ZHL's corporate headquarters is located. That is the address to which any legal or other similar communications should appropriately be addressed, and that is the reason why Marblehead was given as ZHL's principal place of business. As far as actually transacting business (in the sense of making and spending money) is concerned, however,

ZHL's principle (and indeed exclusive) place of business is in Florida. I attach hereto as Exhibit A a true and accurate copy of ZHL's filing with the Massachusetts Secretary of State. That form contains the following entry:

If the business entity is organized wholly to do business outside Massachusetts, the location of that office:

No. and Street: 2821 PROCTOR RD
City or Town: SARASOTA State: FL Zip: 34231 Country: USA

3. In addition, I attach hereto as Exhibit B a copy of ZHL's 2003 Annual Report, filed on March 4, 2004. That Annual Report also acknowledges that ZHL was organized "wholly to do business outside Massachusetts" and gives as the location of its office the ASC on Proctor Road in Sarasota.

4. I also understand that the Lamensdorfs' filings have put forward the claim that there have been no doctors operating in the surgery center since Dr. Lamensdorf pulled his cases in May, 2002. That is completely inaccurate. Several doctors have performed surgeries at the facility since Dr. Lamensdorf left. Indeed, Dr. Lamensdorf knows perfectly well that other doctors have used the facility in 2003, 2004, and 2005. Attached hereto as Exhibit C is a true and accurate copy of excerpts from Dr. Lamensdorf's deposition (which I attended) in which he acknowledged as much. I would add that in my opinion the primary reason that the surgery center is vacant today is the pending sale of the facility. The prospective purchaser, Global Surgical Partners, is acting on behalf of a group of approximately 15-20 Sarasota area physicians. It is my understanding that the surgeons will own the facility and that Global will manage it for the surgeons under contract. It is obviously in the physicians' interest to pay the lowest possible price for the ASC, and I believe that they understand that bringing their cases to the ASC would at this point be contrary to their long-term interest.

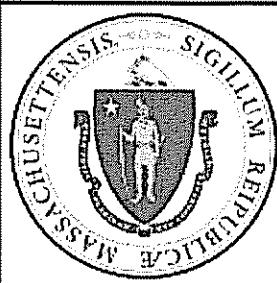
5. I am also aware that some of the Lamensdorfs' submissions could be construed as averring that the ASC has no current business operations or employees. That is simply false. The ASC currently has two part-time employees: Kasia Rossi, who acts as the facility's Risk Manager, and Leslie Hendricks, who performs various administrative functions. Ms. Hendricks works three (3) days a week at the ASC and Ms. Rossi works on an as-needed basis. Ms. Hendricks pays ZHL's bills as they are incurred, and performs other necessary work including filling out the paperwork required by various government authorities and third-party payors. Currently, the ASC remains licensed by the state of Florida and certified by Medicare. It is also accredited by numerous insurance companies and third-party payors. I am aware that the prospective buyers are willing to pay a premium for the ASC over and above the value of the land and buildings precisely because the ASC is a going concern.

6. In short, the Lamensdorfs' suggestion that the ASC is moribund because Dr. Lamensdorf is not there to perform surgeries is simply false. As the Court is no doubt aware by now, Mr. Zolla and I are and have been for some time effectively subsidizing ZHL's operations through substantial infusions of capital and shareholder loans. I can assure the Court that Mr. Zolla and I have not been paying Ms. Hendricks and Ms. Rossi money to sit around and do nothing.

SIGNED AND SWORN UNDER THE PAINS AND PENALTIES OF
PERJURY THIS 11th DAY OF JULY, 2005.

/s/ John A. Hirsch
John A. Hirsch

EXHIBIT A



The Commonwealth of Massachusetts
William Francis Galvin

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-
1512
Telephone: (617) 727-9640

ZHL, INCORPORATED Summary Screen



Help with this form

[Request a Certificate](#)

The exact name of the Domestic Profit Corporation: ZHL, INCORPORATED

Entity Type: Domestic Profit Corporation

Identification Number: 043443526

Old Federal Employer Identification Number (Old FEIN): 000637340

Date of Organization in Massachusetts: 11/24/1998

Current Fiscal Month / Day: 12 / 31

Previous Fiscal Month / Day: 00 / 00

The location of its principal office in Massachusetts:

No. and Street: 17 HAWKES ST.

City or Town: MARBLEHEAD State: MA Zip: 01945 Country: USA

If the business entity is organized wholly to do business outside Massachusetts, the location of that office:

No. and Street: 2821 PROCTOR RD

City or Town: SARASOTA State: FL Zip: 34231 Country: USA

The name and address of the Registered Agent:

Name: JOHN A. HIRSCH, PH.D.

No. and Street: 17 HAWKES STREET

City or Town: MARBLEHEAD State: MA Zip: 01945 Country: USA

The officers and all of the directors of the corporation:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	JOHN A. HIRSCH PH.D.	20 SCHOONER RIDGE, MARBLEHEAD, MA 01945 USA	
TREASURER	ANUSIA HIRSCH	20 SCHOONER RIDGE, MARBLEHEAD, MA 01945 USA	
SECRETARY	JOHN A. HIRSCH	17 HAWKES ST., MARBLEHEAD, MA USA	

DIRECTOR

JOHN A. HIRSCH PH D

20 SCHOONER RIDGE,
MARBLEHEAD, MA 01945 USA

Indefinite

business entity stock is publicly traded:

The total number of shares and par value, if any, of each class of stock which the business entity is authorized to issue:

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CWP	\$1.00000	1,200	\$1,200.00	0
CNP	\$1.00000	1,000	\$1,000.00	966

Consent Manufacturer Confidential Data Does Not Require Annual Report
 Partnership Resident Agent For Profit Merger Allowed

Select a type of filing from below to view this business entity filings:

ALL FILINGS
Administrative Dissolution
Annual Report
Application for Reinstatement
Application For Revival

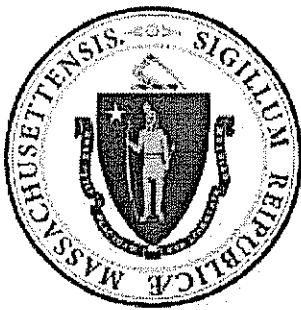
Comments

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 Help

EXHIBIT B

MA SOC Filing Number: 200465340950 Date: 03/04/2004



The Commonwealth of Massachusetts
William Francis Galvin

Secretary of the Commonwealth
 One Ashburton Place, Boston, Massachusetts 02108-1512
 Telephone: (617) 727-9640

Special Instructions

Annual Report 2003
(General Laws, Chapter 156B)

Federal Identification Number: 043443526

1. The exact name of the corporation is: ZHL, INCORPORATED

2a. Location of its principal office in Massachusetts:

No. and Street: 17 HAWKES ST.

City or Town: MARBLEHEAD State: MA Zip: 01945 Country: USA

2b. NOTE: If corporation is organized wholly to do business outside Massachusetts, state location of that office also:

No. and Street: 2821 PROCTOR RD

City or Town: SARASOTA State: FL Zip: 34231 Country: USA

3. Name and address of the Resident Agent, if any:

Name:

No. and Street:

City or Town: State: Zip: Country:

4. Date of the end of the last fiscal year was: 12/31/2003

5. Check here if the corporation stock is publicly traded:

6. The capital stock of each class as of the end of its last fiscal year was:

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization of Amendments		Total Issued and Outstanding
		Num of Shares	Total Par Value	
CNP	\$1.00	1,000	\$1,000.00	966
CWP	\$1.00	1,200	\$1,200.00	0

7. State the names and addresses of the officers and of all the directors of the corporation, and the date on which the term of office of each expires:

(A president, treasurer, clerk, and at least one director are required.)

Title: TREASURER	Expiration of Term:	
First Name: ANUSIA	Middle Name:	Last Name: HIRSCH
Residential Address: 20 SCHOONER RIDGE,		
City: MARBLEHEAD	State: MA	Zip: 01945
Country: USA		
Title: CLERK	Expiration of Term:	
First Name: JOHN	Middle Name: A.	Last Name: HIRSCH
Residential Address: 17 HAWKES ST.,		
City: MARBLEHEAD	State: MA	Zip:
Country: USA		
Title: DIRECTOR	Expiration of Term: indefinite	
First Name: JOHN	Middle Name: A.	Last Name: HIRSCH
Residential Address: 20 SCHOONER RIDGE,		
City: MARBLEHEAD	State: MA	Zip: 01945
Country: USA		
Title: PRESIDENT	Expiration of Term:	
First Name: JOHN	Middle Name: A.	Last Name: HIRSCH
Residential Address: 20 SCHOONER RIDGE,		
City: MARBLEHEAD	State: MA	Zip: 01945
Country: USA		

I, the ANUSIA HIRSCH the undersigned , of the above-named corporation, in compliance with the General Laws, Chapter 156B, hereby certify that the above information is true and correct as of the dates shown. IN WITNESS WHEREOF AND UNDER PENALTIES OF PERJURY, I hereto sign my name on this 4 Day of March, 2004.

EXHIBIT C

1 COMMONWEALTH OF MASSACHUSETTS

2 ESSEX, s.s.

SUPERIOR COURT
CIVIL ACTION NO. B 2 0419

3
4 OPHNET, INC., a Massachusetts)
Corporation, and JOHN A. HIRSCH)
5 and RONALD W. ZOLLA, Individually)
and as Shareholders of ZHL, INC.,)
6 a Massachusetts Corporation, and)
KENNETH CRAM,)

7 Plaintiffs,)

8 vs.)

9 MICHAEL LAMENSDORF, Individually)
10 and as a Shareholder of ZHL, INC.;)
11 MICHAEL LAMENSDORF, M.D., P.C., a)
Florida Professional Corporation;)
12 BAYOU JENNKAY, INC., a Florida)
Corporation; and KATHY LAMENSDORF,)
13 Individually and as an officer of)
Bayou JennKay, Inc.; and ZHL, INC.,)
14 a Massachusetts Corporation,)

15 Defendants.)

DEPOSITION OF
MICHAEL LAMENSDORF

VOLUME IV

COPY

16
17 TAKEN BY: THE PLAINTIFFS HEREIN

18 BEFORE: Laurie J. Cheffy
19 Court Reporter
Notary Public
State of Florida at Large

20 PLACE: Abel, Band, Russell, Collier,
Pitchford & Gordon, Chartered
240 South Pineapple Avenue
21 Ninth Floor
22 Sarasota, Florida 34236

23 DATE: March 1, 2005
24 Commencing at 1:20 p.m.

25 (Appearances on Page 2)

1 Q. Since you have pulled your cases from the
2 surgery center, you are aware that other doctors have
3 operated there, correct?

4 A. Hearsay.

5 Q. Regardless of where you found out, you're
6 aware that other doctors have operated there, correct?

7 A. I'm aware that your employee, Dr. Winkle,
8 operated there. I'm aware that -- I believe Dr. Ehrlich
9 operated there once, and I heard a rumor that he said it
10 was the worst experience of his life. I heard something
11 that he had to go take the rest of the day off or get a
12 massage or something like that.

13 I heard a rumor that Dr. Adler, I've
14 forgotten what his first name is, operated there but I
15 have no way of knowing one way or the other.

16 Q. Did you ever speak to Dr. Winkle about his
17 experiences operating at the Lantz?

18 A. I felt and have been informed that --
19 Excuse me. I was informed by my attorney that I should
20 not discuss the business of the Lantz with anyone who
21 was not a party. Therefore, the only person that I
22 discussed the Lantz with was either my wife, who was a
23 party, or my attorney. Dr. Winkle, it would have been
24 inappropriate to discuss it and I did not discuss it
25 with him.